

**REMARKS**

The applicants note with appreciation the acknowledgement of the claim for priority under section 119 and the notice that all of the certified copies of the priority documents have been received.

The applicants acknowledge and appreciate receiving an initialed copy of the form PTO-1449 that was filed on June 27, 2003.

The applicants appreciate the indication that claims 4, 6, 12 – 16, 18, 19, 21 and 22 would be allowable if re-written in independent form. Accordingly, claims 12 and 15 have been re-written in independent form, claim 11 was canceled, and claims dependent from claim 11 have been amended to depend from amended claim 12. It is respectfully submitted that claims 12 – 16, 18 – 23, 25 and 30 are allowable.

Claims 3 – 9, 11 – 16, 18 – 23, 25 and 29 – 30 are pending. Claims 1, 2, 10, 11, 17, 24 and 26 - 28 have been canceled. New claims 29 – 30 have been added. The applicants respectfully request reconsideration and allowance of this application in view of the above amendments and the following remarks.

Support for the amendments to claim 3 are located in the specification, for example, beginning on page 6, line 18; page 9, line 8, and page 12 line 18. Support for the amendments to claim 5, 6, 7, 8, 9 and 20 is located in the specification, for example, respectively beginning on page 9, line 8; page 9, line 24; page 7, line 18; page 14, line 19; page 11, line 18; and page 17, line 12.

Claims 4, 6, 8 and 15 were objected to for certain informalities. The informalities identified in the office action have been corrected by way of the above amendment. Reconsideration and withdrawal of the objection is respectfully requested.

Claims 1 – 3, 5, 7 – 11, 20 and 23 – 28 were rejected under 35 USC 102(e) as being anticipated by U.S. Patent 6,280,392, Yoshimi et al. (“Yoshimi”). Claim 17 is rejected under 35 USC 103(a) as being unpatentable over Yoshimi in view of U.S. Patent 6,547,743, Brydon (“Brydon”). Insofar as the rejection may be applied to the claims as amended, the rejection is respectfully traversed for reasons including the following, which are provided by way of example.

Claims 1 – 2, 10, 24, and 26 – 28 have been canceled. Furthermore, claims 20, 23 and 25 have been amended to depend directly or indirectly from allowable claim 12. It is respectfully submitted that the rejection is moot as to these claims.

As described in the application, the invention is directed to solving the problem of “weight variations caused by factors other than respiratory movement” which are applied to weight sensors. (Specification page 1, line 27 – page 2, line 3.)

According to the claims, e.g., independent claim 3, a respiratory monitoring system selects sensors used for respiratory signal production based on a ratio between the signal strength in the respiratory frequency band that that of the other frequency band. (E.g., claim 3.) Accordingly, the sensors to which loads related to respiratory body movement are applied, can be accurately selected, thereby producing a more accurate respiratory signal.

Without conceding that Yoshimi discloses any feature of the present invention, Yoshimi is directed to an infant condition monitoring system. According to Yoshimi, a monitoring system selects sensors based on a comparison of respiratory signal level with a threshold level. (E.g., column 5, lines 8 - 15).

The office action asserts that Yoshimi discloses the invention as claimed. To the contrary, Yoshimi fails to teach or suggest the invention, as presently claimed, when the claims are

considered as a whole. Yoshimi fails to teach or suggest, for example, selecting sensors based on a comparison between the signals in the respiration frequency band and the other band. (See, e.g., claim 3.) To the contrary, Yoshimi selects sensors based on a threshold level. Therefore, Yoshimi does not provide the same level of accuracy in selecting the sensors as the claimed invention.

Yoshimi fails to teach or suggest, for example, these elements recited in independent claim 3. It is respectfully submitted therefore that claim 3 is patentable over Yoshimi.

For at least these reasons, the combination of features recited in independent claim 3, when interpreted as a whole, is submitted to patentably distinguish over the prior art. In addition, Yoshimi clearly fails to show other claimed features as well.

With respect to the rejected dependent claims, applicant respectfully submits that these claims are allowable not only by virtue of their dependency from independent claim 3, but also because of additional features they recite in combination.

For example, with respect to claim 7, none of the references of record teaches or suggests a “bias component removing means that removes a bias component from the weight signals ..., the bias component indicating a load applied to the sensor due to a weight of the person,” in combination. In operation, the bias component removing means can improve accuracy in selecting the sensors. Yoshimi teaches removing noise from a breaching signal, and therefore fails to teach removing the bias component indicating a load, as claimed.

With respect to claim 9, none of the references teaches or suggests reselecting “the sensors when the amplitude is smaller than the predetermined level for the predetermined period,” in combination. In operation, one or more embodiments of the claimed invention can improve accuracy in selecting the sensor, and therefore can provide accurate breathing signals.

To the contrary, Yoshimi teaches determining an abnormal condition when a magnitude of the breathing signal remains lower than a threshold level.

New claims 29 – 30 have been added to further define the invention, and are believed to be patentable for reasons including these set out above.

The applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. The applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, the applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Although the office action indicated that claim 11 was rejected under 35 USC 102(3), the office action failed to provide any reason why independent claim 11 is anticipated. Therefore, any narrowing amendment with respect to claim 11 is not to be construed as a surrender of any subject matter between the original claims and the present claims; rather this is merely an attempt at providing one or more definitions of what the applicant believes to be suitable patent protection. In addition, the present claims provide the intended scope of protection that the applicant is seeking for this application. Therefore, no estoppel should be presumed, and the applicant's claims are intended to include a scope of protection under the Doctrine of Equivalents

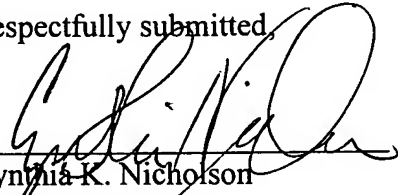
The applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicant has described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, for the sake of simplicity, the applicants have provided examples of why the claims described above are distinguishable over the cited prior art.

Serial No. 10/606,968

In view of the foregoing, the applicants respectfully submit that this application is in condition for allowance. A timely notice to that effect is respectfully requested. If questions relating to patentability remain, the examiner is invited to contact the undersigned by telephone.

Please charge any unforeseen fees that may be due to Deposit Account No. 50-1147.

Respectfully submitted,



Cynthia K. Nicholson  
Reg. No. 36,880

Posz Law Group, PLC  
11250 Roger Bacon Drive, Suite 10  
Reston, VA 20190  
Phone 703-707-9110  
Fax 703-707-9112  
Customer No. 23400